

1 **Rule 38. ~~Trials de novo of j~~ Appeals from Justice Court to District Court court**
2 **proceedings.**

3 (a) Appeal of a judgment or order of the justice court is as provided in Utah Code Section
4 78-5-120.

5 ~~(b) Venue. The appeal shall be heard in the district court location nearest to and in the same~~
6 ~~county as the justice court from which the appeal is taken. Either party may move for a change of~~
7 ~~venue under the applicable Rules of Criminal Procedure.~~

8 ~~(c) (b)~~ The notice of appeal. The

9 (b)(1) A notice of appeal from an order or judgment must be filed within ~~thirty~~ 30 days of the
10 entry of judgment or order. ~~Within twenty days after receipt of the notice of appeal that order or~~
11 judgment.

12 (b)(2) Contents of the Notice- The notice required by this rule shall be in the form of, or
13 substantially similar to, that provided in the appendix of this rule. At a minimum the Notice shall
14 contain:

15 (b)(2)(A) a statement of the order or judgment being appealed and the date of entry of that order
16 or judgment.

17 (b)(2)(B) the current address at which the appealing party may receive notices concerning the
18 appeal.

19 (b)(2)(C) a statement as to whether the defendant is in custody because of the order or judgment
20 appealed.

21 (b)(2)(D) A statement that the Notice has been served on the opposing party and the method of
22 that service.

23 (b)(2)(E) deficiencies in the form of the filing shall not cause the court to reject the filing. They
24 may, however, impact the efficient processing of the appeal.

25 (c) Duties of the Justice Court.

26 Within five days of receiving the Notice of Appeal, the justice court shall transmit to the district
27 court a certified copy of the docket, District Court location specified by the Presiding Judge of the
28 district court to receive such appeals, a certified appeal packet containing copies of:

29 (c)(1) the notice of appeal;

(c)(2) the docket;

(c)(3) the information or ~~waiver of information~~, citation;

(c)(4) the judgment and sentence, if any; and

(c)(5) any other orders and papers filed in the case.

~~(d) Stay of judgment. Upon the filing of the notice of appeal and the issuance of a certificate of probable cause as provided for in the Rules of Criminal Procedure, the judgment of the justice court shall be stayed.~~

(d) Duties of the District Court.

(d)(1)(A) Upon receipt of the appeal packet from the Justice Court, the District Court shall hold a hearing to determine the issues to be resolved on appeal. The Court shall send notices to the appellant at the address provided on the Notice of appeal. Notices to the other party shall be to the address provided in the docket for that party.

(d)(1)(B) If the defendant is in custody because of the matter appealed, the Court shall hold the hearing within five days of the receipt of the appeals packet. If the defendant is not in custody because of the matter appealed, the Court should hold a hearing within 30 days of receipt of the appeals packet.

(e) District Court Procedures for trials de novo.

An appeal by a defendant pursuant to Utah Code Ann. § 78-5-120(1) shall be accomplished by one of the following procedures:

(e)(1) If the defendant elects to go to trial.

(e)(1)(A) The Court will determine what number and level of offenses the defendant is facing. The court may instruct the prosecutor to file an amended information reflecting that order.

(e)(1)(B) Discovery, the trial and any pre-trial evidentiary matters the court deems necessary shall be held in accordance with these rules.

(e)(1)(C) After the trial, the district court shall, if appropriate, sentence the defendant and enter judgment in the case as provided in these rules and otherwise by law.

(e)(1)(D) When entered, the judgment of conviction or order of dismissal serves to vacate the judgment or orders of the justice court and becomes the judgment of the case.

(e)(2) If the defendant elects to waive trial and enter a plea of no contest or guilty.

(e)(2)(A) a defendant may resolve an appeal by waiving trial and entering, or re-entering, a plea of guilty or no contest, whether through negotiation with the prosecutor or not.

(e)(2)(B) Any plea shall be taken in accordance with these rules.

(e)(2)(C) the court shall proceed to sentence the defendant or enter such other orders required by the particular plea.

(e)(2)(D) When entered, the district court's judgment or other orders vacate the orders or judgment of the justice court and become the order or judgment of the case.

(e)(2)(E) A defendant who moves to withdraw a plea entered pursuant to this section may only seek to withdraw it pursuant to the provisions of Utah Code Ann. § 77-13-6.

(e)(3) Other dispositions. A defendant, at a point prior to judgment, by plea or trial, may choose to withdraw the appeal and have the case remanded to the justice court.

~~(e) Orders. Upon the filing of the notice of appeal the district court shall issue all further orders governing the trial de novo or hearing de novo, except that the justice court shall determine the application for a certificate of probable cause.~~

~~(f) Proceedings and order of the district court. The district court shall conduct anew the proceedings on which the judgment or order appealed from are based. Unless the case is remanded, the disposition of fine revenue shall be according to district court procedures. Upon entry of the judgment or final order of the district court, the clerk of the district court shall transmit to the justice court which rendered the original judgment notice of the manner of disposition of the case.~~

~~(g) Remand. The district court may dismiss the appeal and remand the case to the justice court if the appellant:~~

~~(g)(1) fails to appear,~~

~~(g)(2) fails to take steps necessary to prosecute the appeal, or~~

~~(g)(3) requests the appeal be dismissed.~~

~~Upon entering a decision in a hearing de novo, the district court.~~

(f) District Court Procedures for hearings de novo.

If the appeal seeks a de novo hearing pursuant to Utah Code Ann. 78-5-120(3) or (4),:

(f)(1) the court shall conduct such hearing and make the appropriate findings or orders.

(f)(2) Within 10 days of entering its findings or orders, the Court shall remand the case to the

justice court ~~as required by Utah Code Section 78-5-120.~~, unless the case is disposed of by the findings or orders, or the Court retains jurisdiction pursuant to 78-5-120(5).

(g) Retained jurisdiction. In cases where the District Court retains jurisdiction after disposing of the matters on appeal, the Court shall order the justice court to forward all cash bail, other security, or revenues received by the justice court to the district court for disposition. The Justice Court shall transmit such monies or securities within 20 days of receiving the order.

(h) Other bases for remand- The district court may also remand a case to the district court if it finds that the defendant has abandoned the appeal.

(i) Justice Court procedures on remand. Upon receiving a remanded case, the justice court shall set a review hearing to determine what, if any proceedings need be taken. If the defendant is in custody because of the case being considered, such hearing shall be had within five days of receipt of the order of remand. Otherwise, the hearing should be had within 30 days. The court shall send notice to the parties of the hearing at the addresses contained in the Notice of Appeal, unless those have been updated by the District Court.

(j) During the pendency of the appeal, and until a final judgment or order of dismissal is entered in the District Court, the justice court shall retain jurisdiction to monitor terms of probation or other consequences of the plea, unless those orders or terms are stayed pursuant to Rule 27(a).